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Michael M. Evans

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PATE PIERCE & BAIRD

175 SOUTH MAIN STREET, SUITE 1250

SALT LAKE CITY, UT 84111

EXAMINER

DANIELS, MATTHEW J

ART UNIT

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1791

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Supplemental Action

1. Box 1(a) was erroneously checked on the Advisory Action mailed 27 January 2009 indicating that the period for reply extended three months from the mailing date of the final rejection. The OIPE stamp caused the Applicant's first response to the 9 October 2008 Office Action to be entered with a filing date of 15 December 2008. The certificate of mailing indicates that the correspondence was actually deposited on 9 December 2008, within two months of the final rejection mailed 9 October 2009. Box 1(b) should have been checked in the 27 January 2009 Advisory Action, and this supplemental action corrects that error.

Declaration(s) Filed Under 37 CFR 1.132

2. The declarations are not being entered.

Response to Arguments

3. Applicant's arguments filed 15 December 2008 and 30 December 2008 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

a) The instant claims require a distribution of globules that varies randomly in lateral width along the longitudinal direction. Shills teaches only a non-random pattern with constant width spray patterns. While the lateral location of the Shills' spray pattern may vary, the width of those spray patterns (96, 98, 102) is non-random.

b) Applicant asserts that the applicators 50, 52, and 54 teach against Applicant's claimed invention. The Office Action is silent with respect to a required clear articulation of why the claimed invention would have been obvious.

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- c) A copy of the Vintage tiles of the Applicant shown in Exhibit A with the Shills products shown in Exhibits B-D in the attached declaration shows contradicts the arguments maintained by the Examiner.
- d) The Office Action asserts Maurer to teach a synthetic roofing member capable of brushing to provide texturing, but Maurer teaches brushing on a natural slate to highlight the patterns on the already formed and hardened members. The Office Action quibbles with the presence of a particular word at the expense of ignoring the actual teaching.
- e) It is not proper to incorporate the De Paoli process into that of Shills. The applicators of Shills would have to be replaced with a structure re-engineered to a different purpose to ever insert spatters as taught by De Paoli. De Paoli provides ground surfaces which would not inherently simulate the appearance of biota.
- f) Shills teaches the use of a slurry, which is a watery mixture of insoluble matter. Thus, it is improper for the Office Action to apply "the driest consistency possible" as assertedly taught by Arpin.
- g) Applicant does not find in the combination of Shills, Maurer, and Maletic any teaching of a texturing with a random orientation. The Office Action is silent on the issue.
- h) (Claim 61) Chaffee does not teach applying a random distribution and Shills' system would have to be destroyed and re-engineered to a new purpose. The references teach against one another and cannot be properly combined.
- i) (Claim 62) Shills does not suggest a means for creating the boundary of Chaffee's coating, nor the medallions on substantially exclusively the exposed portions of the tile. Also compare the tiles of Shills with those of the Applicant in the declaration. Chaffee does not provide any

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suggestion of colors corresponding to biota. The coloration and accents are the opposite of the grit surfacing applied to asphalt roofing used by Chaffee in 1929. The combination of Pollock is improper. Flinging by hand (Pollock) is the opposite of using the automated structures of Shills. Shills' even and uniform base coats generated by the flipping of droplets could not be duplicated by hand throwing. The Office Action remains still silent on this issue, raised before by Applicant.

j) Applicant has provided an attached declaration.

4. These arguments are not persuasive for the following reasons:

a) More explanation is suggested to explain the basis for Applicant's assertion that Shills provides only a non-random pattern with constant width spray patterns. See Claim 1 of the Shills Patent and the title. While Shills does suggest a spray pattern (98, for example), it must be noted that the spray pattern is produced by a rotating brush which flings material against the conveyor below. It is submitted that this would produce a spray pattern which anticipates the claimed invention since each droplet emanating from the brush of Shills would vary in lateral width along the longitudinal direction.

b) It is noted that the claimed invention provides no applicators, and thus it is unclear how the applicators of the reference are said to teach against the claimed invention. The rotating brushes of Shills results in a "spray pattern", suggesting that any claimed deformation of globules is also achieved by the Shills reference.

c) The non-final rejection mailed 25 January 2008 cites to the Shills reference, also relied upon in the 9 October 2008 final rejection. The declaration is not being entered or considered.

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d) The Maurer process is a finishing process used as an alternative to sanding, and the Examiner submits that both finishing techniques would impart a texture to the surface of the material.

Clearly an irregular pattern is suggested by Maurer (3:1-5), and it is submitted that the brushing of Maurer is not limited only to a step of highlighting.

e) In reconsidering the rejection, it is noted that the rejection does not take the position that the De Paoli process be bodily incorporated into the Shills process, but only that in view of Shills' teaching to use a slurry without specific limitation on the components or composition, one would have found it obvious to use known slurries or compositions used for a similar purpose. This is what De Paoli provides. While Applicant's remarks suggest that there is no teaching of biota, the Examiner submits that this term is interpreted broadly since biota may have a virtually unlimited range of colors and that the claimed limitations are drawn to an aesthetic feature of the product rather than to the stepwise limitations or compositions which produce that product.

f) Arpin suggests that the amount of water can be adjusted, and doing so is generally obvious to the ordinary artisan in the concrete and cement arts. In suggesting that Arpin teaches against the claimed invention by providing a zero slump concrete which one would not substitute into the Shills process, Applicant may also wish to provide further explanation as to how the globules or medallions simultaneously deform to form medallions (Claim 1), while being substantially incapable of slumping (deforming) (Claim 30).

g) Maurer provides a step of texturing (See rejection of Claim 44), and providing a automatic means for doing so would not point towards patentability.

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h) (Claim 61) Chaffee teaches a roofing tile, and one would have found it obvious to vary the appearance in view of the Shills reference. There is no teaching against one another in these references, and the Examiner maintains that they are properly combinable.

i) (Claim 62) It is noted that the claims do not actually require a means for creating a boundary, and therefore there is no distinguishable method step. Chaffee suggests a boundary, and therefore it is submitted that it would have been obvious to provide such a boundary regardless of whether the means are specifically disclosed by Chaffee. As noted above, the declaration is not being considered. Arguments with respect to "biota" are not persuasive since virtually any color could be considered to be that of "biota." Where it is obvious to provide a pattern using an automatic apparatus, it is submitted that it would have been equally obvious to provide a similar pattern by hand, particularly since both provide random or substantially random patterns.

j) The declaration has not been considered.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. DANIELS whose telephone number is (571)272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Matthew J. Daniels/
Primary Examiner, Art Unit 1791
2/5/09